IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 23 OF 1993

M/s.Mahindra & Mahindra Ltd. ...Applicant
V/s.
The Commissioner of Income-tax,
Bombay City-IV, Bombay. ...Respondent

Mr.J.D.Mistry i/b. B.V. Jhaveri for Applicant.
Mr.Parag Vyas for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : AUGUST 12, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income Tax Act, the Income Tax Appellate Tribunal has referred the following questions of law arising out of the order passed for the assessment year 1984-85 for the opinion of this Court :-

> "(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in upholding the disallowance of the I.T.O. of a sum of Rs.70 Lakhs which is the premium the assessee had to pay on the debentures issued by it to the public for

subscription at the time of their redemption and in the allowing the amount to be spread over 7 years from the issue to redumption of the debentures ?

(2) Whether on the facts and in the circumstances of the case the Tribunal was justified in upholding the disallowance of Rs.1,46,027/- being the remuneration paid to the director during the year without the sanction of the Central Government? "

2. The learned Counsel appearing for the applicant assessee submits that the applicant is not interested in pressing the first question. Accordingly, the first question hereinabove is returned unanswered.

3. So far as the second question is concerned, it relates to disallowance of Rs.1,46,027/- being remuneration paid to the director during the year without sanction of the Central Government. It is brought to our notice that the sanction was kept pending

since there was a challenge to the guide-lines framed by the Central Government under the provisions of the Companies Act and the said guide-lines were struck down by Delhi High Court against which the SLP was filed by the Union of India which was granted and converted into Civil Appeal No.2272/80. By the time, the matter came for decision before the Supreme Court, the fresh guidelines were issued. In that view of the matter, the learned Additional Solicitor General appearing for the Union of India, made a statement before the Supreme Court that in the case of Mahindra and Mahindra that all applications pending for grant of approval would be deemed to have been approved; in which the quantum of remuneration paid or payable did not exceed the 1969 guidelines. The Hon'ble Supreme Court recorded this statement made by the learned Additional Solicitor General and in view of the statement made, Court disposed of the Civil Appeal referred to hereinabove by order dated 9th May, 1999.

4. The Government of India, after disposal of the aforesaid Civil Appeal in view of the order of the

Supreme Court, by letter dated 29th July, 1994, communicated its approval to the pending proposal of the assessee - Mahindra and Mahindra, which also contained approval to the pending proposal of Mr.B.R. Sule as Managing Director for a period of five years with effect from 1.11.80 to 31.10.85.

5. This approval to the proposal of Mr.B.R. Sule would, obviously, relate back to the date of application made for that purpose. In view of this subsequent event, the question referred will have to be answered in favour of the assessee. It is no doubt true that on the date when the Tribunal decided the appeal filed by the assessee, the view taken by it was a justified view, however, in view of the subsequent event, the view held by the Tribunal cannot be said to be good. In this scenario, the said question referred is answered in negative i.e. in favour of assessee and against the revenue.

. Reference accordingly stands disposed of with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**